

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

RSA-1039 of 2016

Date of decision :17.08.2016

Vishnu Bhagwan

.....Petitioner

Versus

Amar Singh (deceased) through Lrs.

.....Respondent

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr. S.K.Hooda, Advocate
for the appellant.

DARSHAN SINGH, J.

The present appeal has been preferred against the judgement and decree dated 15.04.2015 passed by learned Additional District Judge, Rohtak, vide which the appeal filed by the appellant-plaintiff against the judgement and decree dated 16.02.2013 passed by the learned Additional Civil Judge (Sr. Division), Meham, has been dismissed.

2. Appellant-plaintiff-Vishnu Bhagwan filed a suit for possession with respect to the agriculture land comprised of khewat No. 1310 Min, Khatoni No. 1557, Killa Nos. 175/11 (7-8), 20/1 (4-0) total measuring 11 kanals 8 marlas situated within the revenue estate of village Behlba, Tehsil Meham, District Rohtak, on the ground that the defendant had forcibly and illegally dis-possessed the plaintiff from the suit property, in collusion with the police agency Meham.

3. The defendants contested the suit on the ground, *inter alia*, that plaintiff was never in possession of the suit property. The suit property was possessed by Amar Singh, being mortgagee and, thereafter, the plaintiff transferred his share vide sale deed No. 648 dated 04.06.2007 in favour of

Smt. Birmati and vide registered sale deed No. 243 dated 04.05.2009 in favour of Smt. Kitabo for a valid consideration and delivered the possession of the land to the aforesaid vendee. Mutation was also sanctioned in their favour. The suit property was mortgaged with possession in favour of Amar Singh. The said mortgage was redeemed vide order dated 28.02.2006 passed by the Court of Collector, Meham but after redemption of the land, possession was never delivered to the mortgagor and as such, the mortgagor has efficacious alternate remedy to file the execution petition before the Court of Collector, Meham, for enforcement of order dated 28.02.2006. The plaintiff filed execution petition titled as Vishnu Bhagwan and another Vs. Amar Singh, for enforcement of judgement and decree dated 03.06.2009 passed in Civil Suit No. 71/1 of 2006 in respect of the suit land but the said execution petition was dismissed as withdrawn on 10.05.2010 all other averments raised in the plaint were controverted.

4. From the pleadings of the parties, following issues were framed:-

(1) Whether the plaintiff and the defendant is entitled for decree of possession of land total measuring 11 kanals 8 marlas as mentioned in para No.2 of the plaint? OPP.

(2) Whether the suit of the plaintiff is not maintainable? OPD

(3) Relief.

5. On appreciating the evidence on record and contentions raised by learned counsel for the parties, the learned trial Court dismissed the impugned judgement and decree dated 16.02.2013.

6. Aggrieved with the aforesaid judgement and decree, the appellant-plaintiff preferred the appeal. The same was also dismissed by the learned First Appellate Court vide impugned judgement and decree dated 15.04.2015. Hence, this regular second appeal.

7. I have heard learned counsel for the appellant and have gone through the record very carefully.

8. Learned counsel for the appellant contended that plaintiff is recorded to be the owner of the suit land in the jamabandhi for the year 2002-03 (Ex.P10). He and proforma defendant Krishan Bhagwan have got suit land redeemed and, thereafter, the appellant came in possession of the suit land but he was forcibly and illegally dispossessed by the defendants. So, the appellant-plaintiff is entitled for possession of the suit property.

9. I have duly considered the aforesaid contention. The appellant has filed the suit for seeking possession of the suit property claiming himself to be the owner thereof but from the evidence on record, it comes out that plaintiff has sold the land comprised khasra No. 175/11 min (4-0) to Smt. Birmati wife of Sh. Parkash by way of sale deed bearing No. 648 dated 04.06.2007. He has further sold the land bearing 14 kanal 5 marla out of the total land to Smt. Kitabo by dint of the sale deed bearing No. 243 dated 04.05.2009. On the basis of the aforesaid sale deeds, mutations were also sanctioned in favour of Smt. Birmati and Smt. Kitabo, respectively.

10. The aforesaid documents establishes that the plaintiff has already sold his right title or interest in the suit property to said Birmati and Kitabo.

11. Appellant-plaintiff has also admitted in his cross-examination that he has sold the land to Smt. Birmati in the year 2007 and has also sold

the land to Smt. Kitabo. All these facts were concealed by the appellant-plaintiff and were never disclosed in the plaint.

12. Thus, as the appellant-plaintiff has already sold his share in the suit land, so, he cannot seek the possession of the suit property. Thus, I do not find any infirmity in the concurrent findings recorded by the learned Courts below.

13. Resultantly, the present appeal is without any merit and the same is hereby dismissed.

(DARSHAN SINGH)
JUDGE

17.08.2016

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No